

(5)
No. 85-1517

SUPREME COURT, U.S.
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JOSEPH F. SPANIO, JR.
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**In The
Supreme Court of the United States**
October Term, 1985

— o —
THE STATE OF COLORADO,

Petitioner,

vs.

JOHN LEROY SPRING,

Respondent.

— o —
**On Certiorari to the Supreme Court of the
State of Colorado**

— o —
JOINT APPENDIX
— o —

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**Petition for Writ of Certiorari filed March 14, 1986
Certiorari granted May 5, 1986**

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DOCKET ENTRIES

May	29, 1979	Information filed.
October	15, 1979	Amended Information filed.
December	6, 1979	Second Amended Information filed.
January	23, 1980	Motion to Suppress filed.
March	17, 1980	Hearing on Motion To Suppress.
April	4, 1980	Order Denying Motion To Suppress.
April	28, 1980	Trial To Jury Commences.
May	3, 1980	Jury Returns Verdict of Guilty.
June	2, 1980	Motion for New Trial filed.
June	25, 1980	Motion for New Trial denied. Entry of Judgment of Conviction. Defen- dant sentenced and Mittimus issued.

(f. 1) IN THE DISTRICT COURT OF THE
FOURTEENTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF
MOFFAT AND STATE OF COLORADO

Criminal Action Number 79CR40

PEOPLE OF THE STATE OF COLORADO
PLAINTIFF,

vs.

DONALD PAUL WAGNER

and

JOHN LEROY SPRING,

DEFENDANTS.

TRANSCRIPT OF
PROCEEDINGS

[The transcript has been edited, as per agreement of counsel, to include only portions relevant to *Colorado v. Spring*, 85-1517]

This matter came on regularly for hearing to the Court at the hour of 10:00 a.m., on Monday, the 17th day of March, 1980, at the Moffat County Courthouse, Craig, Colorado, before the HONORABLE Claus J. Hume, Judge of the District Court. [The transcript has been edited, as

(f. 2) The Court: The Court will be in session. The record should reflect the matter before the Court at this time is Moffat County Criminal Action Number 79CR40 involving the People of the State of Colorado against John Leroy Spring. The record should reflect Mr. Spring is personally present in Court with his Attorney, Mr. Brat-

fisch. Mr. Bratfisch is also accompanied by co-counsel this morning and I'm sorry I don't — Michael Gallagher, your Honor — Michael Gallagher, thank you; the People are represented by Mr. Carroll E. Multz, District Attorney and by Mr. Saba of the District Attorney's Office. The matter is set this morning for hearing on various motions.

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(f. 18) Mr. Saba: Your Honor, the People will call as their first witness Mr. Harold D. Wactor, III.

(f. 19) By The Court: Mr. Wactor, if you would step right around here and raise your right hand, please. Do you solemnly swear the testimony you are about to give in the Cause before the Court should be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. Wactor: I do.

The Court: Be seated.

Mr. Saba: Will you please state your name and business address for the record?

Mr. Wactor: Harold N. Wactor, III, Bureau of Alcohol, Tobacco and Firearms, 1150 Grand Avenue, Kansas City, Missouri, 64106.

(f. 20) Mr. Saba: Mr. Wactor, what is your main profession or occupation?

A. My job title is Special Agent. I am a criminal investigator with the United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms.

Q. And how long have you been so employed?

A. Approximately 3 and 1/2 years.

Q. Okay, and what training, if any, have you received in that position?

A. For that position, specifically, I have attended the Federal Criminal Investigators Course, the Bureau of Alcohol, Tobacco and Firearms New Agent Training Course, and other seminars and short courses.

(f. 21) Q. Would you please relate to the Court, uh, briefly, what your general duties are as an ATF Agent?

A. I'm a criminal investigator. We enforce the Federal laws with regard to firearms, explosives, alcohol and tobacco.

Q. Okay, Agent Wactor, did there come a time that you had the occasion to investigate a person by the name of John Spring?

A. Yes.

Q. Okay, and under what circumstances?

(f. 22) A. Mr. Spring came about as part of an investigation that I initiated during February of 1979. At that time I received information that George Dennison and others including Mr. Spring had been involved in the burglary or theft of firearms, that they planned to steal firearms, transport them interstate and sell them.

Q. Okay, and what was the source of that information?

A. The initial source of information was Susan Dennison, wife of George Dennison.

Q. Okay, and did you obtain any information from George Dennison himself?

A. Yes, I did.

(f. 23) Q. And what was the nature of that?

A. Because of Bureau policy, we could not use Susan Dennison as an informant. We began to work on George Dennison and George became an informant for the Bureau of Alcohol, Tobacco and Firearms.

Q. Okay, was Mr. Denuison in contact with Mr. Spring at this time?

A. Yes, he was in telephone contact with Mr. Spring, who I was led to believe was in Iowa at the present time—at that time.

Q. Okay, and during what approximate dates did these telephone conversations take place?

(f. 24) A. Telephone conversations that I was privy to through recording - uh - started March 21st, 1979, and went up to and included March 29th, 1979.

Q. Okay, and how was your investigation related to this series of telephone conversations?

A. I had information that Mr. Spring was a convicted felon—that he had committed thefts or burglaries to obtain firearms, and that with or through Mr. Dennison that he had sold these firearms.

(f. 25) Q. Then, what was the source of your information at that point in time that Mr. Spring was a convicted felon?

A. Contact with the Sheriffs in Iowa -uh- Bud Erwin and Ron Tucker, and conversations with the Anamotia (phonetic) Men's Reformatory in Iowa.

Q. Okay, based on that information and based on the information in the telephone conversations, uh, what further steps did you take in your investigation?

A. On March 28th, Mr. Dennison received a telephone call from Becky Spring, who is identified as the wife of John Spring. She stated that the day before, March 27th, John had obtained a large quantity of firearms and that he was desirous of selling these firearms. I contacted Sheriff (f. 26) Erwin up in Otumwa (phonetic) Iowa, and he informed me—that—this was on March 29th, I talked with Sheriff Erwin and he informed me that on March the 27th there had been a residential burglary in the County, which a—approximately 30 some firearms had been taken. There were two telephone calls on the night of March 29th between John and Becky Spring and George Dennison, at which point John stated that he had a bunch of firearms. He described some of the firearms, which matched the information I had from Sheriff Erwin. He stated that he would be up at 1:30 in the afternoon the next day, March the 30th, Friday.

Q. Did you take any steps to recover those particular firearms that you were informed about?

(f. 27) A. Yes, we did. Uh, we were set up for an undercover buy on—at 1:30 March the 30th in the K-Mart parking lot Vivian and Antioch Roads, Kansas City, Missouri. Prior to this George Dennison contacted me, described a green duster that -uh- Mr. Spring and a Robert Beam were riding in, stated that he knew both Spring and Beam, that he had been incarcerated at the Anamosa Men's Reformatory with them. He stated that he saw a large quantity of firearms and that there were approximately

14 firearms for sale that were contained (f. 28) in this vehicle. We established a surveillance at the K-Mart parking lot. Two undercover agents, Virgil Walker and Pat Kelly were awaiting the arrival of Mr. Spring and Mr. Beam at the K-Mart parking lot. Mr. Dennison arrived, contacted both our undercover agents, and Mr. Spring and Mr. Beam who were located in different parts of the parking lot.

Q. Okay, at that point in time, what crimes did you suspect Mr. Spring of?

A. Being a convicted felon, we had probable cause to believe that he was in violation of the appendix of Title 18 of the United States Code, which prohibits (f. 29) felons and other persons from possessing firearms subsequent to their conviction. We had reason to believe—we knew that these firearms had been stolen in Iowa and that they had been transported to Missouri by Mr. Beam and Mr. Spring. We have two separate offenses there—a felon causing a firearm to be transported in interstate commerce and later it was determined the bartering, sale of stolen firearms, which had -uh- which had moved as a part of interstate commerce. There is also the crime of dealing in firearms without a license.

Q. Okay, Sir, could you please -uh- describe the events that transpired then on the afternoon of March (f. 30) 30th, 1979 at approximately 1:30 in the K-Mart parking lot in Kansas City?

A. Mr. Beam and Mr. Spring drove to the parking—uh, the area of the parking lot—

Mr. Bratfish: I object, your Honor—on foundation—I don't think it has been established that this witness was there or not.

By The Court: Objection sustained.

(f. 31) Mr. Saba: Q. Okay, Mr. Wactor, would you please indicate where you were on the afternoon of March 30th, 1979?

A. I was at the K-Mart parking lot—I was in direct observation of the vehicle bearing Mr. Beam and Mr. Spring prior to their meeting with our agents, and I was monitoring through electronic means our agents.

Q. Okay, was that the same surveillance that you testified to earlier?

A. Yes it is.

Q. Okay, Mr. Wactor, would you please relate to the Court the events that transpired on that occasion?

A. A vehicle bearing Mr. Dennison and another vehicle bearing Mr. Beam and Mr. Spring drove adjacent to the vehicle containing special agents Kelly and Walker. Mr. (f. 32) Dennison was dismissed on the pretense of being sent to get a six-pack of beer. At that point, Mr. Beam and Mr. Spring engaged in conversations and negotiated with agents Kelly and Walker for the sale of these firearms. After negotiations were completed, the two vehicles were moved because of the arrival of—of unidentified and uninvolved third parties. Mr. uh—the vehicle bearing Mr. Beam and Mr. Spring was moved to the South edge of the parking lot followed by the vehicle containing the Agents Walker and Kelly. The vehicles were put trunk to trunk so that the firearms could be transferred. After the trunk of the Duster bearing Mr. Beam and Mr. Spring (f. 33) were opened, then Mr. Beam and Mr. Spring were in the process of taking the firearms out of the trunk, they were arrested.

Q. Okay, and by whom were they arrested?

A. They were arrested by special Agents Walker and Kelly.

Q. Okay, and at that—that point, what if anything, did you do?

A. I was approximately 75 to 100 feet away (f. 34) observing the entire incident and I drove then with other agents that were on the covering team. We assisted in securing and searching Mr. Beam and Mr. Spring and collecting, tagging and removing the firearms that had been in the vehicle.

Q. What amounts, or numbers and types of firearms were in the vehicle, and which vehicle were they in?

A. They were in the green Duster—there were a total of 18 firearms on the person of Mr. Beam and Mr. Spring and in the vehicle. Of these, 14 rifles and shotguns had been—correction 13 rifles and shotguns and 1 handgun had been offered for sale.

Q. Were all those weapons in the vehicle that Mr. Spring had arrived at the parking lot in?

(f. 35) A. All of the—uh—yes, at one time or another they had all been in the vehicle.

. . .

(f. 38) By Mr. Saba: Q. Agent Wactor, when the arrest was made that you've just described, how did you know it was John Spring?

A. Initially we knew it was John Spring because of the eye witness identification of George Dennison. During the arrest and processing—uh—correction—during the con-

tact with the undercover agents, he was identified as John—they were identified as John and Bob.

Q. Excuse me, by whom?

A. By Dennison. Uh—last names were not given. Uh, after the arrest, the—both individuals were searched for identification and both individuals were asked what their identity was. And, it was determined that the (f. 39) individuals were Robert Beam and John Spring, as we had suspected.

Q. Do you recall whether or not the wallet that Mr. Spring contained any—uh—documents to indicate who he was?

A. Mr. Spring had on his person several pieces of identification, to include that of John Spring. He had other identification for at least two other persons, one of them being George Dennison.

(f. 40) Q. Okay, do you recall specifically whether or not Mr. Spring indicated that he was Mr. Spring to an agent?

A. Yes, Sir he did indicate that he was John Spring.

Q. Okay, and when did—did he do that?

A. At the parking lot and later at the office when he was being cross—uh, the Alcohol, Tobacco and Firearms Office, where he was being processed. He completed a questionnaire in his own handwriting, which—uh—listed his name as John Spring, date of birth and other information about himself.

Q. Okay, Agent Wactor, do you know whether or not Mr. Spring was advised of his Constitutional Rights at the time of the arrest?

(f. 41) A. Mr. Spring w—and Mr. Beam were both advised of their rights, separately. Mr. Spring was in the custody of Agent John Malooly, and other Agents. I observed Agent Malooly with—uh—an Advise of Rights Card in his hand, uh beginning to read—uh—rights to Mr. Spring.

Q. And where was Mr. Spring at that time?

A. As I recall, he was in the back seat of one of our cars.

Q. Okay, and where were you at that time?

A. Uh, standing on—uh—on the pavement.

(f. 42) Q. Okay, and did you listen to the full advisement?

A. No, I did not.

Q. Okay, what portions, if any, did you hear?

A. The initial part.

Q. Okay, are you aware of what procedure Mr. Malooly was following when you were present?

A. Mr. Malooly appeared to be following the—a standard advice of rights procedure, for which we have uh, three separate, different forms, which all contain the same information, includes the advice of rights, and then a (f. 43) second portion, which includes the waiver of rights.

Q. Okay, can you testify whether or not you saw him utilize one of your standard Department of Treasury, Bureau of Alcohol, Tobacco and Firearms forms?

A. He appeared to have one of the two advice of rights cards in his hand.

Q. Okay, did he have it in his hand?

A. As I recall, yes.

• • •

(f. 51) Q. Agent Wactor, directing your attention back to the point and time of the arrest, were you aware of whether or not John Spring was at that time personally armed?

A. We had been appraised by Mr. Dennison that both Mr. Beam and Mr. Spring had firearms in their possession.

Q. And, are you aware of whether or not a firearm was removed from his possession?

(f. 52) A. Subsequent to the arrest an Astra .22 caliber revolver—uh, correction—.22 caliber pistol bearing serial number 99598 was removed from the coat pocket of Mr. Spring.

Q. Did you personally observe that weapon removed from his coat pocket?

A. The firearm was removed by Special Agent Malooly, and I arrived immediately after it was removed from the pocket, and advised by Agent Malooly that this had come from Mr. Spring's pocket.

Q. Okay, and where is that firearm now?

A. It's in my possession at the present time.

Q. Is the firearm disabled at the present time?

A. It is not disabled, it is a functioning firearm, it is not loaded.

(f. 53) Q. Okay, and is this the same firearm that was removed on March 30th, 1979 from Mr. Spring's possession?

A. Yes, it is.

Mr. Saba: Your Honor, at this time, the People would tender into evidence this firearm, just delivered to myself by Mr. Agent Wactor and marked People's Exhibit F.

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(f. 59) Q. (By Mr. Saba) Agent Wactor, do you know whether or not Mr. Spring was again advised of his rights on March 30th, 1979?

A. (By Agent Wactor) Uh, according to a report that I received from Special Agent Sedouski and an ATF form of—advice of rights and a waiver to his rights, Mr. Spring had been advised of his rights a second time; during processing at the offices of the Bureau of Alcohol, Tobacco and Firearms.

(f. 60) Q. Okay, are you aware of another occasion on which he was advised of his rights on March 30th, 1979?

A. At the bond hearing when Mr. Beam and Mr. Spring appeared before United States Magistrate Kelvin Hamilton, they were advised of their rights at that time.

Q. Were you personally present?

(f. 61) A. Yes, I was.

Q. Okay, and what details do you recall about that advisement?

A. It is a standard advisement that is given at all bail bond hearings that he has the right to counsel,—uh—that he has the right to remain silent, that if he cannot afford counsel that it be provided—or otherwise obtain counsel—be otherwise—it will be appointed for him, and that anything

that is said can be used against him. I do not recall the exact wording or the exact order of the admonition.

Q. Okay, did that advisement take place before or after the advisement that you have just indicated took place at the Bureau Office?

(f. 62) A. This was much later in the afternoon.

Q. Okay. Agent Wactor is the person that you knew on March 30th, 1979 as John Spring, the same person that you know by that name on this date?

A. Uh, yes Sir, this man seated at the table next to Mr. Brattfisch, uh, with the brown shirt.

Mr. Saba: Your Honor, may the record reflect that the witness has identified the Defendant?

By The Court: The record should so reflect.

Q. Okay, Agent Wactor, going back to the advisement of rights that took place at the Bureau office on March 30th, 1979—were you present at that advisement?

(f. 63) A. I was not.

Q. Okay. Are you personally aware of which Agent conducted that advisement?

A. Uh, yes, it was Agent Christopher Sadowski. S-a-d-o-w-s-k-i.

Q. Okay. Are you aware of whether or not a statement was taken from the Defendant John Spring, immediately succeeding that, or subsequent to that advisement?

(f. 64) A. I was advised that he was questioned at that time—um—I do not have a report as to exactly what

was discussed and I do not know what in total was discussed at that time.

Q. Okay, after March 30th, 1979, what was your next contact with John Spring?

A. Other than observing Mr. Spring at one of the Federal Court proceedings, the next time that I had occasion to speak directly with Mr. Spring was on July the 13th, 1979 at approximately 2:05 p.m. at the Jackson County Jail, Kansas City, Missouri.

Q. And, under what circumstances did that come about?

(f. 65) A. This was subsequent to Mr. Spring's guilty plea and sentencing. We had received information from Sheriff Tucker that one person who knew Spring—uh—Mr. Spring had advised that he might have some firearms and/or explosives in a pond located about the Clifflands area of Iowa. Agent Patterson and I then went to the Jackson County Jail to discuss this matter with Mr. Spring.

Q. Okay, do you recall whether or not John Spring was advised of his rights on that occasion?

A. Yes, he was.

Q. By whom?

(f. 66) A. Uh, I advised Mr. Spring of his rights on that occasion.

Q. Okay, would you please repeat to the Court the exact procedure that you adhere to?

A. After entry to the jail, waiting for Mr. Spring to be brought down, we went to an enclosed room, which was immediately off a larger room, uh, we sat down and I took

out a copy of—uh—ATF form for the written advice and waiver of rights. As is my procedure I handed Mr. Cop—Mr. Spring a copy after determining that he (f. 67) could read. I asked him to read along with me while I read his rights to him. I read the first part—the advice of rights, asked him if he had any questions, if there was anything that I could explain to him. Then, after receiving a negative reply that there was nothing to be explained, that he knew his rights, I asked him to sign the form indicating that he had in fact been advised of his rights. He declined to do so at this time. He indicated that he would speak to us. At that time I read the waiver of—the portion of the form. Again asked him if he had any questions, needed an explanation. He replied that he did not need an explanation, and I asked him to sign it. He again refused to sign the form. At that point I closed the clipboard and Agent Patterson and I stood up to leave. Uh, Mr. Spring verbally stopped (f. 68) us from leaving, he said words to the effect that he knew his rights, but he didn't want to sign anything, but he was willing to talk to us.

Q. Agent Wactor, I hand you what has been marked as People's Exhibit G, and ask you if you would examine the same.

A. Yes, Sir. People's Exhibit G is an ATF form 3200.4, uh, which is waiver of right to remain silent and of right to advice of counsel. It contains the English version on the front and the Spanish version on the other side. It was the English version that was uh, given to and read to Mr. Spring.

Q. Is that the identical advisement form that you used on July 13th, 1979?

(f. 69) A. Yes Sir, it is, uh.

Q. And are those the identical rights of which you advised Mr. Spring of on that date?

A. Yes, Sir, they were read verbatim (sic) as they are printed on this sheet here with additions made by me (f. 70) after each section inquiring as to whether he understood or, for the waiver part, would waive his rights.

Q. Can you state for a fact whether or not you advised him of each and every right on that document?

A. Yes, Sir.

Your Honor at this time the People would tender into evidence People's Exhibit G.

Mr. Bratfisch: No objection, your Honor.

Q. (By Mr. Saba) Agent Wactor, you indicated that you closed your clipboard and you got up to leave and that Mr. Spring expressed a willingness to talk to you. Did you at that time promise him anything?

(f. 71) A. No.

Q. Did you in—at that time threaten him in any manner?

A. No.

Q. Did you do—do or conduct any activity which would coerce him to talk to you?

A. No.

Q. Okay, and what happened at that point?

A. After that point, we resumed our seats, and after it was clear in my mind that he understood what his rights were and that he would talk to us, give up his rights, even though he wouldn't sign the form, then we began asking

(f. 72) him questions about his activities. The uh—among the—uh—his activities that we questioned him about were—uh—his activities in the Cliffland area, where he was supposed to have a cave where there were some firearms supposedly—allegedly stored.

Mr. Saba: Excuse me.

Mr. Wactor: Also, about a pond, which was in or near the Clifflands area which might contain additional firearms and/or explosives. Mr. Spring replied that (f. 73) there were no other firearms or explosives in the Clifflands area, or in the pond up in Iowa. He did—uh—relate to a pond that was in Missouri where we knew some firearms had been stolen, uh ww—where some firearms had been placed, but we had not recovered the firearms.

Q. Okay. Agent Wactor, did you ask him any questions about any poss—possible involvement Mr. Spring may have had in incidents that took place in Colorado?

A. Yes, I did.

Q. Okay, and do you recall what questions you asked him?

A. There was general conversation about his activities, at which time he related some of his activities (f. 74) in Colorado—uh, he indicated that he did not know any specific dates, that he had been in and out of Colorado several times between September of 1978 and uh February of 1979. In specific, we asked him about the uh death of a Mr. Walker.

Q. Okay, and would you relate to the Court precisely how you worded that question?

A. There were several questions asked which were not answered. I asked him in words to the effect, this is toward the end of the interview, "Is it safe to assume that you, Walker and Wagner went out together and that only you and Wagner came back alive?". At that point he replied (f. 75) "Yea", and he said—so—something to the effect if uh "you could say that", or something like that, and he grinned at that time.

Q. Did he indicate where this incident took place?

A. South of Craig, Colorado.

Q. Did he indicate at what approximate time of year it took place?

A. Yes, approximately during February of 1979.

(f. 76) Q. At this particular interview, did you ask Mr. Spring any questions about the .22 automatic that was previously entered into evidence as People's Exhibit G?

A. Agent Patterson asked him about several firearms, including a .22 caliber pistol, which had belonged to Mr. Walker, and Mr. Spring indicated—uh—that that was—the—that we had that pistol in custody, that we had taken it from him.

Q. Sorry, did I understand your testimony—did—Mr. Spring indicated that he had taken that particular pistol from Mr. Walker.

A. Uh, both. Uh, what I had said was that we had taken the pistol from him. He also stated that he had received that firearm from Mr. Walker.

(f. 77) Q. Okay, did he say when he received that firearm from Mr. Walker?

A. Uh, the—at approximately the time of uh his death.

By The Court: I think your question was asked in the terms of Exhibit G, Mr. Saba,—what you meant? The firearm that is admitted here has been labled (sic) Exhibit F—

Mr. Saba: Thank you, your Honor, if I might correct myself.

By Mr. Saba: Agent Wactor, all these questions that I have just asked you regarding Exhibit G—uh—(f. 78) pertaining to the firearm, if I informed you that it is actually Exhibit F, would your answers bear any substantial variation in any substantial degree or at all?

A. No, it would be the same.

Q. (By Mr. Saba) Okay, would you please indicate whether or not the, or with what specific—uh—description, what specifications the firearm was—um—(f. 79) identified to or described to, uh—Mr. Spring during that interview?

A. As I recall, it was described as a .22 caliber pistol. It belonged to Mr.—er—a .22 caliber firearm—it belonged to Mr. Walker.

Q. Okay, was there any further description on it?

A. Not as such.

Q. Do you recall whether or not Mr. Spring described the gun when he admitted—when he indicated to you that he had obtained that gun from Mr. Walker?

A. No, as I recall, uh, it was just uh referred to as a .22 caliber pistol, or a .22 caliber firearm at different times.

(f. 80) Q. Okay, Agent Wactor, after you asked him this question about who went out and who came back alive, did Mr. Spring relate anything else to you that was relevant to it?

A. During the course of the interview we asked him uh—exactly what did happen. He did relate that Mr. Walker had been talked into going down into a ravine and flushing some deer out, so that they could be shot—the deer could be shot. Uh, he also stated that prior to Mr. Walker's going down into the ravine that he had obtained the .22 caliber pistol from Mr. Walker.

(f. 81) Q. Okay, did he indicate whether or not these incidents were related to or contemporaneous taking place at about the same time as this incident where certain people went out and certain people came back alive?

A. Yes, uh the question about people com—going out and only two coming back alive, uh, uh, was ref—reference to the other uh other statements.

Q. Did Mr. Spring make any other statements to you at that time regarding any incidents that took place in Colorado?

(f. 82) A. No, I believe that—no those were the only statements he made concerning incidents in Colorado.

Q. Okay, and would you describe for—for Judge Hume Mr. Spring's demeanor during this interview?

A. Mr. Spring was dressed in jail clothing, his dress is slightly different than what it is today. He had, uh, longer hair, it was back in a pony-tail. He had a beard and a mustache at that time. It was in the afternoon of—he appeared to be relaxed and in certain uh, concerning certain

topics, he was talkative, uh concerning other topics, he was not talkative.

Q. How long did the interview last?

(f. 83) A. The interview lasted 50 minutes, although Agent Patterson and I were in the jail complex itself an hour and five minutes.

Q. Okay—

A. An hour and ten minutes, Excuse me.

Q. During the entire length of the interview, did you at anytime threaten Mr. Spring?

A. No, I did not.

Q. Did you at anytime promise him anything?

A. No, there were no promises made.

Q. Was he at anytime ever touched by any law enforcement agent?

(f. 84) A. No, he was not, uh we were seated on separate chairs, there was approximately a distance of 4 to 5 feet separating me and Mr. Spring and probably the same distance separating Mr. Spring and Agent Patterson.

Q. Was there anything abnormal about the physical environment?

A. Well, it was conducted—the interview was conducted inside a jail, it was a uh concrete or masonry structured building, rather austere. I don't recall (f. 85) the exact dimensions of the room. It appeared to be at least 10 foot by 10 foot square. There were at least three chairs in the room. There were no windows, no bars. Uh, it had two doors, both of which were closed at that time.

Q. Thank you Mr. Wactor. I have no further questions at this time, your Honor.

CROSS EXAMINATION

By Mr. Bratfisch:

Q. Agent Wactor, on July 13th, when you went into the jail to talk to Mr. Spring, who was with you that day?

A. Agent Joseph Patterson.

(f. 86) Q. Alright. Now from your testimony, it is your procedure to immediately identify yourselves? Is that correct?

A. We do, uh, identify ourselves. I did not state that. Yes, we did. He was identi—I identified myself to Mr. Spring using a pocket commission, which contains a badge on the outside and a commission card—two part commission card on the inside. I also asked Mr. Spring if he remembered us, and he indicated that he did.

Q. Alright, now was that the first order of business when you entered the room? Did anything happen before that?

(f. 87) A. Yes, we actually we'd met Mr. Spring in another room, which was a large, I'd have to describe it as a day room—contains several chairs and there were other inmates of the jail and their attorneys present. Uh, there was a short conversation in this room, and I don't recall as to whether I identified myself there at that time, or whether we went into the other room.

Q. Can you remember what was said at all in this conversation?

(f. 88) A. Uh, we'd like to talk to you and uh, can we go in this other room.

Q. Alright, anything else you can remember that was said?

A. No Sir.

Q. Okay, what's the first thing you can remember being said then when you entered the smaller room?

A. When we entered the smaller room, it was probably at that time that I displayed the entire commission book to Mr. Spring. We sat down and then he was—I believe again we probably told him that we wanted to talk to him, but before we could we had certain formalities that we had to go to, that I had to advise him of his rights, and then I went into the advice of rights form.

(f. 89) Q. Alright. So, the—the only two things that really happened before the advisement of rights were you identified yourselves and you told him that you wanted to talk to him?

A. That is correct.

Q. Alright. And at that point, you didn't talk about what you wanted to talk to him about, did you?

A. That is correct.

Q. Then, after you read the statement of rights as contained in People's Exhibit G, Mr. Spring, you stated, refused to sign it. Is that correct?

A. That is correct.

(f. 90) Q. Now, you've described for us the—I won't go through it, but as you attempted to leave, Mr. Spring

stopped you and said that he would talk to you anyway. Is that correct?

A. Yes, Sir.

Q. Okay. Now, I take it from that point on you never went through the business of re-reading him his rights, did you?

A. That is correct, I did not.

(f. 91) Q. Okay, or even—not even just reading him his rights. You just never brought up the question of rights again in that interview, did you?

A. After he informed us that he knew his rights, that he would talk to us, but he wouldn't sign anything, no, the rights were not discussed after that.

Q. Now, Agent Wactor, when and from whom did you first learn anything about a possible homicide here in Craig, Colorado?

A. The first information that we actually had about a homicide came from George and Susan Dennison. Uh, I do not recall exactly, I believe we were probably advised (f. 92) first by Susan Dennison. Then we were advised by George Dennison, that there—they had information that there had been a homicide committed in Craig, Colorado.

Q. Okay, and when did you receive this from them?

A. This was during March of 1979, and I do not recall the exact date.

Q. Alright. Now, when you went to talk to Mr. Spring on July 13th, the first order of business you brought up with him when you did agree to talk was the guns that maybe were hidden in a pond, right?

A. Yes Sir.

Q. And this was after Mr. Spring had been convicted and sentenced on the arrest for the firearms that (f. 93) you just described. Is that correct?

A. Yes that is correct.

Q. Agent Wactor, were you, at the time that you talked to John Spring on July 13th about these guns concerned about building another case against John Spring, or did you simply want to take care of getting these firearms confiscated by your agency?

A. Primary concern was retrieving the firearms and the explosives that uh—the uh—so that the firearms, if we could find a lawful owner on them that they could be (f. 94) returned and that the explosives could be rendered harmless.

Q. Alright. So the, your general interest at that point was, now that Mr. Spring had been convicted on an arrest, that you had been in on etc.—that you just sort of wanted to clear what unfinished business there was up before he was sent off to the Federal penitentiary?

A. That's right sir.

Q. Alright. And then that one thing on your mind was simply obtaining these guns and not have them sit there until 1985 or whenever Mr. Spring was going to be paroled. Is that correct?

(f. 95) A. That co—that is correct. He was—he also answered other questions about the firearms, uh, particularly firearms fences in the Kansas City area, and he was asked questions of other activities.

Q. So, but would it be fair to say that you had never told Mr. Spring that we are investigating possible future charges against you for possession or theft of other firearms. Isn't it true you never said anything like that?

A. That's correct.

Q. Alright. The general tone of the conversation was basically let's talk now and clear up whatever unfinished business we have, uh before you are sentenced. Would that be fair?

(f. 96) A. I'm sorry, would you repeat that again Sir?

Q. The general tone and tenor of your conversation at that point was let's talk—a waiver hasn't been signed here, but let's talk about what um—what other things can be cleared up for your benefit before Mr. Spring is sent to the Federal Penitentiary.

(f. 97) A. If you mean for—and—when you say for your benefit, if you mean for my benefit—yes sir.

Q. Agent Wactor, you testified that you felt in your own mind that John Spring understood his rights and had waived them orally, even though he hadn't signed that form. Is that correct?

A. That's correct.

Q. Did you also feel in your own mind that John Spring thought there was some difference between signing that form and not? In your own mind, did you think that he attributed some importance to the distinction he was making in his behavior?

A. Yes, I think he did.

(f. 98) Q. Now, Agent Wactor, isn't it also true that when you went to talk to John Spring on July 13th, 1979, you intended to ask him a few questions about this possible homicide in Craig, Colorado?

A. That is correct.

Q. Now Agent Wactor, did you make notes of that interview with John Spring on July 13th?

A. Notes were not made at the time of the interview. Handwritten notes were made at a later time.

Q. Alright. By yourself?

A. Yes. I made handwritten notes by myself and I was advised that—uh—Agent Patterson also made notes.

(f. 99) Q. Alright, and at a later time did you have those notes typed out?

A. No, I did not.

. . .

(f. 100) Q. Now Agent Wactor, you testified that you took some handwritten notes right after this interview?

A. Not immediately after, it was uh it was on a short—short while that evening.

Q. The same day?

A. Yes sir.

Q. Alright. I'm going to hand you Defendant's—its been marked as Defendant's Exhibit 1 and ask you if you can identify this?

A. Uh, yes, this appears to be a photocopy of my notes. Yes sir.

Q. Those are the handwritten notes that we have (f. 101) been talking about, that you took after the July 13th interview with Mr. Spring?

A. Yes sir, a photocopy.

Q. Alright—your—due to the fact that that's a photocopy and not that good of one, and I can't read this Agent's handwriting too well and it's a page and half, I'd ask that he simply reads that into the record at this point.

By The Court: Alright.

Mr. Bratfisch: Go ahead, sir.

Mr. Wactor: 7/13/79—Excuse me, your Honor—an abbreviation or two in here—should I—do I—may I read what an abbreviation means?

(f. 102) By The Court: I think we are reading for content essentially, so probably just go ahead and read it without specifying abbreviations as such.

By Agent Wactor: Ruth Patterson 1345 to 1455 at jail, interviewed John Spring at 1405. Spring refused to sign waiver. I offered to leave. He said he would talk to us. Words to effect "I know my rights, but I don't want to sign anything". I have quotes around I know my rights, but I don't want to sign anything. Paragraph.

He was evasive, Answered several questions, quote "I'd (f. 103) rather not talk about that." (end of quote) (Paragraph) Admitted being in San Diego, reacted to Sheridan, but denied burglary or murder. Denied San Diego murder of cabby. Knowledge of Los Vegas fence or conservation officer. Evasive about Walker. Admitted he, Walker and

Wagner went out in the woods together. Would not talk about who shot Walker. I asked "Is it safe to assume you, Walker and Wagner went out together and only you and Wagner came back alive." Spring said "yea, something like that" and grinned. The back of the Page, Page 2:

He did say Walker went into a ravine to flush deer. Spring won't say who shot Walker—which is an error. He did admit to getting Walker's gun away from him before he went to flush deer out of the ravine. And my signature Agent Wactor (f. 104) on the back.

Q. (By Mr. Bratfisch) Okay, sir. You stated that your sentence "Spring won't say who shot Walker" was an error?

A. Yes sir. That's an error—should—uh should read wouldn't.

. . .

(f. 106) Q. (By Mr. Bratfisch) Now from this statement, Agent Wactor, it appears that you had several other things on your mind that you wanted to clear up with Mr. Spring, didn't you?

A. That's right. We discussed several other things.

Q. Are all the things that you discussed contained in your notes, Defendant's Exhibit 1?

A. No, they're not.

Q. Would you tell us what other things you discussed?

A. We discussed the Clifflands (sic) area, which he (f. 107) replied that there were no firearms or explosives.

Uh, we discussed when and how he had sold firearms that he had obtained. Um—

Q. And, was he—was he willing to talk to you about the firearms?

A. Yes he was.

Q. Not much hesitation about that, was there?

A. No.

Q. What other things did you talk about?

A. Other than what's contained in the notes there—uh—I don't believe we discussed anything else.

Q. Okay. You brought up a uh—you say reacted to Sheridan. What was that about?

(f. 108) A. At the time that Mr. Spring may have been in California, there were a couple of homicides committed and a burglary, one of them being at a Sheridan, believe it was in San Diego and I cannot explain exactly what his reaction was—it was a physical reaction. As if he were startled. He, of course, denied any knowledge of—of any other killings and uh, knowing about any firearms that might have been used in any other homicides. He did admit to being in San Diego. Yes.

Q. Did he readily admit to being in San Diego?

A. Yes.

(f. 109) Q. Alright. And, did he have any particular hesitation or reservation about denying the Sheridan burglary or the possible homicide in San Diego, or anything like that?

A. No I don't—other than the physical reaction that—uh—that I observed, and I can't describe it—uh—

Q. Was it basically that you just off base—I mean you know—I don't know anything about this to tell you, that you were off base—in asking him about it—

A. If I were to interpret his reaction, it was one of surprise.

Q. Okay. (By Mr. Bratfisch)

A. And then (By Agent Wactor)

Q. And then he denied any involvement, is the correct?

(f. 110) A. Yes, he did.

Q. Alright. And, he didn't say before he denied I don't want to talk about it—he just denied it. Is that true?

A. That is correct.

Q. And the same thing would go for knowledge of a Los Vegas fence or something about a conservation officer? He readily denied knowledge about that, is that correct?

A. Yes. No, excuse me, I'm in error there. He denied knowledge of the fence, uh, however he d—he stated (f. 111) about the conservation officer that it was a rumor that he had heard.

Q. Alright. But, he was willing to relate to you that that was a rumor that he had heard, was willing to talk to you about that to that extent?

A. Yes.

Q. Okay. Now the thing that he was evasive about and was hesitating in talking to you about was the absence of Mr. Walker. Is that correct?

(f. 112) A. Yea, that is correct.

Q. And, it's fair to say that, well, you state yourself here—you state that you wouldn't talk about who shot Walker? Is that correct?

A. That is correct.

Q. Okay. And, after that point that he said he wouldn't talk about who shot Walker was when you—you asked him—"Is it safe to assume that you (meaning John Spring and Walker and Wagner) went out together and only you and Wagner came back alive?" Is that correct?

A. That question of mine and his answer was toward the end of the interview, yes.

(f. 113) Q. Right. Then it was after the point in time where early on he'd say I don't—I didn't—I don't want to talk about who shot Walker. Is this correct?

A. I don't recall. I don't know. And I would be—if I said uh he told me that he didn't want to talk about who shot Walker, I would be totally remiss. There were several an—questions that were not answered and several that were answered with shrugs of the shoulder and he—he at one time he did say I would rather not talk about that, but I cannot say exactly which reaction, which type of answer I uh was referring to there.

Q. Alright. But, in any event, those responses that you've just related to the Court came before your—(f.

114) your question that uh—is it safe to assume, etc . . . before you left.

A. It probably—it probably did come before that question, yes.

Q. Okay. Thank you. Now, how detailed was he about describing how the gun was gotten away from Walker before he went out, went down to flush out the animal?

(f. 115) A. He did not go into detail about that.

Q. Did he go into—did he say who got the gun? He or Wagner?

A. He.

Q. Did he tell you anything about where he gun was when Walker was shot?

A. Only the impression I had that he still had the firearm.

Q. In the van, on his person, do you know?

A. I don't know.

Q. Did he say anything to indicate whether this was done immediately before he went down into the ravine, or earlier that evening, or the previous day? Any time element involved here?

(f. 116) A. The time element involved is that it had to do with the time prior to his going into the ravine to flush the deer out.

Q. Okay. But, to the best of your memory its—John Spring didn't pin down how much prior to, did he?

A. No, he did not.

Q. Agent Wactor, you stated that you were at the bond hearing when Magistrate Calvin Hamilton advised Mr. Spring?

A. That is correct.

Q. And what was he being advised for at that (f. 117) time? What was he being held for that he was advised on?

A. It was a standard bail bond hearing following my complaint, made and sworn with Magistrate Hamilton that Mr. Spring and Mr. Beam had been arrested and that I was charging them with violation with one of the sections in the Gun Control Act. Title 18 United States Code 922—I believe it's J, in that they had uh part of a raids to barter or sell uh stolen firearms, which were moving as, or which constituted interstate commerce.

Q. And that was the extent of it? It related (f. 118) to the offenses that were occurring around the arrest of March 30th, correct?

A. Yes.

Q. He wasn't being advised for any other offense or possible offense at that time, other than what you have just told us?

A. He was attending a bail bond hearing on those charges.

Q. Okay, sir, you've related that at the time of the arrest of John Spring on March 30th, in parts you were relying on information from George Dennison. Is that correct?

A. That is correct.

Q. Alright. What kind of arrangement had you made with George Dennison for his aide and help?

(f. 119) A. George Dennison, uh, was recruited as an informant and he has elected to come forward in this case, therefore I can't discuss this. Uh, he was to provide information about the activities of his associates or friends regarding their theft and sale of firearms and other information as it became apparent. There was—he elected to do this and he told me, because it was out of fear of Mr. Spring and Mr. Wagner.

Q. Did he tell you why he feared these two men?

A. Yes, he did. He told me that Mr. Spring and Mr. Wagner and I believe another female, I don't recall who it was, had come to Kansas City from Colorado. They had (f. 120) difficulty with their car and Mr. Spring—correction—Mr. Dennison and Mrs. Dennison drove these people up to Iowa. On the trip up there Mr. Dennison described how Mr. Spring and Mr. Wagner had described the killing of Mr. Walker and how Mr. Wagner set in the back seat of the vehicle spinning the cylinder on a revolver.

• • •

(f. 145) Q. Agent Wactor, you followed John Springs's case clear through to when he entered a guilty plea in Federal Court, didn't you?

A. Yea, are you asking if I attended all of the Court sessions?

Q. Well, no, not attended them, but you were aware of what was going on with this case?

A. Yes, sir, I was.

Q. Okay, and you were aware of when he entered his guilty plea?

A. No, I did not attend his guilty plea.

Q. Were you aware it was July 5th, or approximately thereabouts 1979?

(f. 146) A. I would have to look in the case report. I don't know.

Q. Were you aware that the time you talked to him July 13th, 1979, that is was after his guilty plea had been entered?

A. Yes sir.

Q. And, you were familiar enough with this case to know that he was represented by a lawyer in that case, were you not?

A. Yes sir, that is correct.

Q. Do you know that lawyer's name?

A. No sir, I don't recall what lawyer defended him.

(f. 147) Q. Did you know at the time?

A. At—at—during the course of the Court action subsequent to his arrest, yes I did.

Q. Now, you did not call John Spring's lawyer that he had just had on this Federal Case before you went to talk to him July 13th, did you?

A. No, I'm not required to.

(f. 148) Q. And, you didn't call him during that conversation, did you?

A. No, I did not.

Q. Does the name Thomas Fisher ring a bell?

A. Um—he is a defense attorney, but I do not know if he was Mr. Spring's attorney.

Q. Alright. Did you ever talk with Mr. Spring's attorney that you suspected Mr. Spring of?

A. I never had any conversations with the defense attorney that I recall.

. . .

(f. 150) Q. Now, Agent Patterson was present with you when you talked to John Spring on July 13th, 1979, correct?

A. That is correct.

Q. How many times do you recall Mr. Spring telling you that he didn't want to talk about anything about Walker's death?

A. He never said he did not want to tell anything about Walker's death.

Q. How many times did he indicate that he didn't want to talk about it?

A. In referring as to who shot Mr. Walker, (f. 151) I believe there was only one time that he said I'd rather not talk about that, or words to that effect.

Q. Do you recall Agent Patterson asking John Spring if he had taken the gun off Walker's body?

A. I don't recall if he asked that.

Q. Do you recall if you asked it?

A. No, I did not.

Q. And you don't recall Spring saying that he would rather not talk about that?

A. No.

Q. Okay. Do you recall Agent Patterson asking John Spring if he had shot Walker?

A. I believe he did—one of us asked him if he'd shot Walker.

(f. 152) Q. Okay. And do you recall John Spring's response?

A. I believe that that was the point where he said he'd rather not talk about it.

Q. Okay. And, do you recall yourself or Agent Patterson asking John Spring if Wagner had shot Walker.

A. Yes, one or the other of us did ask him.

Q. Okay. And, again, what was John Spring's response?

A. I don't recall his response to that question, apparently we did not receive any sort of an answer. I don't know.

Q. Isn't it true that he responded that he didn't want to talk about that again?

(f. 153) A. He may have.

Q. Isn't it also true that these questions about Walker's death were interspersed in other more general conversation about other things?

A. No, uh, it was uh when we started to talk about the Walker death, we stayed with that generally.

(f. 154) Q. Alright, besides the three questions I just mentioned here, what other questions did you ask John Spring about the Walker death?

A. Exact questions I can't give you. He was asked in general questions about it, if uh—when it occurred, if he was present, if he shot him, if Wagner shot him. He was asked about the pistol. I asked him a question is it safe to assume three of you had gone out and only you—Walker and Wagner had gone out and only you and Wagner had come back alive. Those are the specific type of questions that I do recall.

Q. Okay, and it's your testimony that those questions, one followed another and there was never any conversation about anything else interspersed within that conversation?

(f. 155) A. I'd have to say that that is generally correct. I might have—no, I'd have to say that that is correct, to the best of my recollection.

Q. Would it be fair to say that every time John Spring stated that he'd rather not talk about a question about Walker's death, that you or Agent Patterson backed off and asked a more general innocuous question?

A. No, I'd say that we went to a different topic. If he said uh, if in reply to a question, did you shoot Walker, if he stated that—he replied that he would rather not talk about it, then we'd go to a different question concerning the uh—

Q. Concerning Walker's death?

(f. 156) A. Walker homicide, yes, which he readily answered.

Q. But, often as not, that answer was I'd rather not talk about it, right?

A. No sir.

. . .

(f. 157) Q. Sir, when did you first contact any agency in Colorado concerning a possible homicide here in Colorado?

A. It was during March of 1979. I do not recall the exact date because I didn't make a note of it. I'd contacted the ATF Office in Denver. They relayed the information and I received a call back from the Craig Police Department. I had given the information and whoever I talked to gave them the information and uh, I was informed (f. 158) to the effect that someone would be getting back with me when the snow cleared if they found the body.

Q. Do you recall when that conversation with somebody in Craig was?

A. It was approximately the middle of March. Thereabouts.

Q. And do you know who it was you talked to?

A. No, I do not.

Mr. Bratfisch: No further questions, your Honor.

REDIRECT EXAMINATION

By Mr. Saba: Mr. Wactor, do you recall whether or not the statement of rights form that you previously entered—that had been previously entered into evidence informs, or informed the Defendant that he had the right to stop questioning, stop the questioning at any point in time?

(f. 159) A. Yes sir, I believe that is contained in that.

Q. Okay, Mr. Bratfisch brought out the point that Mr. Spring had indicated to you once and possibly twice that he'd rather not talk about particular issues. Do you recall that?

A. Yes sir.

Q. Did he at any time, did Mr. Spring at any time ask that you stop the questioning?

(f. 160) A. He did not.

Q. Did he at any time indicate a reluctance to proceed with the questioning?

A. No, he did not.

(f. 173) By Mr. Saba: Mr. Wactor, I believe that on cross-examination Mr. Bratfisch asked you a question to the effect of, "In your mind did Mr. Spring distinguish between signing the waiver and making an actual waiver", do you recall that question?

(f. 174) A. No, I don't.

Q. Well, let me ask you the question—do you recall—do want me to restate it?

A. Yes, please.

Q. Did Mr. Spring, in your mind, distinguish between signing the waiver and making an actual waiver?

A. Yes, he did.

Q. Okay. Now, could you explain that a little bit further? What does—what exactly do you mean?

(f. 175) A. It is my opinion, attained during the conversation after informing him of his rights, our wanting—showing him that uh we were going to leave and his stop-

ping us, saying that he would testify, uh—correction that he would talk to us, but he wouldn't sign anything—it is my opinion that he was giving me a waiver of his rights to counsel and to remain silent, that he would talk to me, but that he would not sign it and it is my opinion that it would put us at this situation where we are here now, my word against his word, or, if he were to take the stand.

Q. Okay. During that session, during that particular interview did Mr. Spring ever ask you for an attorney?

A. No, he did not.

. . .

(f. 179) Q. Okay. Do you personally know for what alleged crimes they were arrested at that point?

A. At the time of the arrest, we had probable cause to believe that we had four separate violations of Federal Firearms Law. That is, uh, from the appendix of Title 18 of the United States Code; A felon in possession of a firearm; From Title 18 (f. 180) of the United States Code; "dealing in firearms a felon transporting or causing a firearm to be transported in interstate commerce"; and the bargaining or bartering of stolen firearms transporting interstate commerce.

. . .

(f. 183) RE-DIRECT [SIC] BY MR. BRATFISCH

By The Court: Okay. Let's try to expedite this if we can.

By Mr. Bratfisch: Agent Wactor, you've indicated that in your mind John Spring made a distinction between talking to you after signing a waiver and not signing a waiver? Correct?

A. I—uh Mr. Spring made a distinction between waiving it and signing a waiver, yes sir.

(f. 184) Q. Right. And you've indicated that that's a distinction that in your mind he felt meant something?

A. Yes sir.

Q. Alright. At that point did you ever take it upon yourself to explain to Mr. Spring that as far as the law was concerned there was no real distinction in as much as how that could be used in Court against him?

A. No sir.

Mr. Saba: Objection, your Honor. I don't know how that is relevant. I don't see that he has any responsibility to do that.

By The Court: Well, I'm not sure that he has the responsibility either, but it has been asked and answered, I'll permit it to remain.

(f. 185) By Mr. Bratfisch: Sir, you testified that it's your thought and feeling that Mr. Spring probably thought that it would be his word against yours in Court about what was said because that wasn't signed. Is that correct?

A. I would be his word against mine about whether he granted a waiver or not. But, in my mind he had definitely granted an oral waiver.

Q. Alright. But that's your guess as to what was in Mr. Spring's mind, was it not?

A. Yes sir.

Q. Okay. In actuality it could be that Mr. Spring was assuming that if he didn't sign the waiver then what

he said could not be used in Court. That's possible, isn't it?

Mr. Saba: Objection, your Honor.

By The Court: Sustained.

Mr. Bratfisch: No further questions.

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(f. 188) Mr. Saba: Your Honor, the People would call the next witness, Joseph A. Patterson.

(f. 189) By The Court: Step right up here, Mr. Patterson. Do you solemnly swear that the testimony that you are about to give in the cause before the Court shall be the truth, the whole truth and nothing but the truth, so help you God?

Agent Patterson: I do.

Q. (By Mr. Saba) Please state your name and business address for the record?

(f. 190) A. (Mr. Patterson) Joseph A. Patterson, 1150 Grand Avenue, Kansas City, Missouri.

Q. Mr. Patterson, what is your main professional occupation?

A. Group Supervisor for the Bureau of Alcohol, Tobacco and Firearms.

• • •

(f. 191) Q. Okay. Did you have the occasion during March of 1979 to participate in the investigation of a person by the name of John Spring?

A. Yes Sir, I did.

Q. Okay. And in what capacity?

A. I was on a surveillance and cover team on March 30th.

Q. Okay. Were you present for the surveillance that took place on March 30th?

* * *

(f. 195) Q. Why were they arrested?

A. Selling firearms without a license. There were a number of charges that could have been made at that time.

Q. Okay. And what other charges were you aware of?

(f. 196) A. Felon in possession of a firearm. Interstate transportation of stolen firearms.

Q. Okay. After observing the arrest, you—did you personally know whether or not, or did you observe whether or not John Spring was advised of his rights?

A. Yes sir.

Q. Would you please describe in detail how that took place?

A. He was sitting in the back seat of an ATF vehicle. Special Agent Jack Malooly read him his rights per an ATF publication.

* * *

(f. 197) Q. Okay. Were you present at that full advisement?

A. Yes sir.

(f. 198) Q. Where were you?

A. Standing outside the vehicle.

Q. Where was Mr. Spring and Agent Malooly?

A. Mr. Spring was in the back seat of the car. Uh, I recall Mr. Malooly, Special Agent Malooly being in the front seat. On that I'm not exactly for sure. Mr. Spring was in the back seat.

Q. Can you state for a fact whether or not Agent Malooly read each right on that card, gave the full advisement?

(f. 199) A. Yes sir, he did.

Q. Okay, after your contact with Mr. Spring at the K-Mart parking lot, did you have any further contacts with Mr. Spring on March 30th, 1979?

A. Yes sir.

Q. Okay. Where and when did that take place?

A. This occurred at the ATF office at 1150 Grand Avenue at approximately 3:15 p.m.

Q. Okay, and what were the circumstances of that contact?

A. At that time he was again advised of his Constitutional Rights per ATF memorandum, or publication.

Q. Okay, and who advised him of his rights on that occasion?

(f. 200) A. Special Agent Christopher Sedouski.

Q. Okay, and were you present for that?

A. Yes sir.

Q. Did you observe whether or not Special Agent Sedouski utilized a statement of rights form, 3200.4?

A. Yes sir, he did.

Q. I hand you what's been marked People's Exhibit J and ask you if you would examine the same?

A. Yes sir.

Q. Is that the form that was utilized on that day?

A. Yes sir.

Q. Did you personally see John Spring sign this form?

A. Yes sir, I did.

(f. 201) Q. I note that it has two signatures by Mr. Spring, did you see him sign both times?

A. Yes sir.

Q. Did you see Agent Sedouski sign this form?

A. Yes sir, I did.

* * *

(f. 203) By Mr. Saba: Regressing for a moment, Mr. Patterson, to the time of the arrest immediately preceding that, were you verb—were you monitoring by any listening device the goings on between the undercover agents and John Spring and Jim Beam?

A. Yes, sir I was.

Q. Did you hear any communications made by either the undercover agents or John Spring with respect to the sale of firearms?

A. Yes, sir. We monitored the uh conversation between the (f. 204) two people.

Q. Okay. What communications do you recall?

A. I don't recall what the exact words were.

Q. Okay. Can you give us the sum and substance of those communications?

A. We could tell that the deal was going down—we left our positions and started moving in. We knew the arrest was forthcoming.

(f. 205) Q. Did the undercover agents and Mr. Spring and Mr. Beam appear to be in a bargaining position to you?

A. Yes sir.

Q. That's the point at which the arrest was made and you moved in?

A. Right.

Q. Okay, Mr. Patterson, returning to the advisement of rights, it took place at approximately 3:15. After the advisement did you then ask Mr. Spring any questions?

A. Yes sir, I did.

Q. Specifically did you ask any questions pertaining to his involvement in any possible criminal activity or incidents in the State of Colorado?

A. Yes sir. Prior to that I asked him if he had any criminal record. He stated that he had a juvenile murder record, (f. 206) which he had when he was age 10. Involved the shooting of his aunt. I then asked if he had

ever shot anybody else. At that time he kind of ducked his head and mumbled "I shot another guy once".

Q. Okay, did you ask him any further questions about the Colorado incidents?

A. Yes sir, I did. I asked him if he had ever been to Colorado. He stated no, that he had not.

Q. Did you ask him whether or not he shot Donnie Walker West of Denver?

A. Yes, sir, I did. I asked him if he had shot a man named Walker West of Denver and had thrown his body into a snow-(f. 207)drift. At that time he replied no.

Q. Okay. What was his demeanor at that time?

A. He—there was a long pause, then he kind of ducked his head and said no—there was no further comment on it.

Q. Do you have any other recollections of the statements that took place on that occasion?

A. No sir.

(f. 208) Q. Did that conclude the interview?

A. Yes sir.

Q. When was your next contact, if any, with John Spring?

A. The next time I saw Mr. Spring was on July 13th, 1979.

Q. Where did that take place and who was present?

A. This meeting took place in the Jackson County Jail at approximately 2:05. At that time I was with Special Agent Harold Wactor.

Q. And what were the circumstances or purposes for that particular meeting?

A. We were trying to ascertain the whereabouts of stolen firearms from Iowa.

(f. 209) Q. Okay. Do you recall whether or not John Spring was advised of his rights on that occasion?

A. Yes sir he was.

Q. Do you recall the procedure adhered to on that occasion?

A. Yes sir, standard procedure. Special Agent Wactor read Mr. Spring his rights from ATF publication 3200.4.

Q. Okay. After the reading of rights, do you recall whether or not John Spring indicated that he understood his rights?

A. Yes sir. Special Agent Wactor asked him if he understood his rights, he said he did.

Q. Do you recall whether or not John Spring signed the written waiver?

A. He did not sign the waiver.

(f. 210) Q. Do you remember the circumstances surrounding his declining to sign that waiver?

A. He merely stated that uh he wouldn't sign anything without his lawyer.

Q. Okay. Did he indicate to you that he wouldn't make a statement without his lawyer?

A. We stook (sic) up, getting ready to leave, he said I won't sign your form, but I'll talk to you. We sat back down and started talking.

(f. 211) Q. Did he ask for a lawyer?

A. No sir.

Q. Okay. And did you in fact—strike that—excuse me.

Q. Did you at that point ask Mr. Spring any questions?

A. Yes sir.

Q. Specifically directing your attention to questions regarding the incidents that may have taken place in Colorado, would you please indicate what questions you asked him?

A. At this time, during our conversation, Mr. Spring stated that he had been in Colorado. We tried to pinpoint the date, but we couldn't. He did say there was snow on the ground, and it was in 1979.

Q. Did he make any statements to you regarding Donnie Walker's .22 caliber automatic pistol?

(f. 212) A. Yes sir. As I said earlier, we were talking to him about stolen guns and were trying to ascertain some information on stolen guns and during the conversation I asked him where he got the .22 pistol he had and he stated that it had been Walker's gun.

Q. Did he explain under what circumstances he obtained possession of that gun?

A. No sir, he did not.

Q. Do you personally know whether or not—strike that, excuse me. Do you recall whether or not Mr. Spring made any statements connecting himself to Mr. Wagner and Donnie Walker?

A. During the conversation Mr. Spring stated that he was (f. 213) riding around, the three of them, Mr. Walker, Mr. Wagner and himself and that more or less the conversation stopped there. At that time Mr. Wagner—er Agent Wactor—too many W's—uh said well, its safe to assume then that three of you were riding around, two of you came back alive, and at the time Mr. Spring kind of laughed and said "yer, you could say that".

(f. 214) Q. What was Mr. Spring's appearance and demeanor at that point?

A. Normal. Relaxed.

Q. Okay. Prior to that statement had Mr. Spring in any way indicated that he chose to stop answering your questions?

A. No sir.

Q. Prior to Mr. Spring's making that statement, did you in any way threaten Mr. Spring?

A. No sir.

Q. Did you in any way, did you promise him anything?

A. No sir.

Q. Did you do anything to compell or force him to make a statement?

A. Nothing.

Q. Do you recall whether or not Mr. Spring made any other (f. 215) statements relating to the incident in Colorado?

A. None that I can recall.

* * *

(f. 216) Q. When you had the interview with John Spring at which you and Agent Wactor were present in the Jackson County Jail, (f. 217) who was doing the questioning? Primarily?

A. It was both.

Q. Do you recall which of you was taking notes?

A. We both took notes.

Q. Did one of you seem to be taking more than the other?

A. Probably Agent Wactor took more notes than I did at that time.

Q. Do you have any recollection of Mr. Spring having related anything to you about ever being or deer hunting?

A. Uh, yes sir. I do recall he said the three of them had been riding around one night and that uh Donnie Walker had gotten out to walk into a ravine to drive a deer out.

* * *

(f. 218) Q. When Mr. Spring related this information to you regarding the fact that Mr. Walker went into a ravine to drive a deer out, preceding that, did Mr. Spring say anything to you about a pistol Mr. Walker may have had in his possession?

A. He said that the gun he had when he was arrested by ATF had been Walker's gun.

Q. Did he say how he obtained possession of that gun from Mr. Walker?

A. No sir, he did not.

(f. 219) Mr. Saba: I have no further questions at this time.

By The Court: Mr. Bratfisch.

Mr. Bratfisch: Thank you.

Q. Agent Patterson, on July 13th, 1979, where did you first meet John Spring at the Jackson County Jail?

A. It was in the uh recreation type room—large room, on the, I think, the 15th floor, one of the upper floors of the Jackson County Jail.

(f. 220) Q. Alright. And what did you or Agent Wactor say to him when you first walked in and met him there?

A. When we first walked in we identified ourselves, showed him our pocket commissions stated that we were Federal Officers, and he kind of laughed and stated "yea, I know who you are."

Q. Okay. Then what was said?

A. We went uh into an interview room with some other people in this recreational area where it was private and quieter, sat down and started advising him of his rights.

Q. Okay, that's the first thing you did when you went in the room, is advise him of his rights?

(f. 221) A. Yes sir.

Q. And that was read off that card?

A. Well, read off, not the card, it was off the uh long form.

Q. Alright. And you marked on that form when he refused to sign it that he had refused to sign it, correct?

A. Special Agent Wactor did, yes.

Q. Alright. And that's when you got up to leave and he stopped you and said "no, I'll talk to you, but I won't sign the form"?

A. That's correct.

Q. Okay. Agent Patterson, do you recall talking to John Spring about a detective magazine being interested and maybe (f. 222) writing a story about him?

A. No sir, I don't recall that.

Q. Do you recall Agent Wactor saying anything about that?

A. No sir, I don't.

Q. Agent Patterson, let's go back to the March 30th, 1979 statement. You contacted John Spring about 3:15 p.m. that day?

A. I initially saw him about 1:40 at the K-Mart parking lot.

Q. Alright. Did you question him at all there?

(f. 223) A. No, sir.

Q. Was it later, at about 3:15 that you questioned him?

A. It was after 3:15. We read his rights at 3:15 and after that we questioned him.

Q. Alright. Now, you already mentioned on direct that when I voir dired on that Exhibit that it was you present, officer Sedowski, Officer Shell and John Spring. Is that correct?

A. Right.

Q. How did this meeting take place? Did you all walk in at once, or what?

A. Special Agent Sedowski was in the finger-print room getting ready to process Mr. Spring, finger-print him, photograph him—that's when we walked in.

(f. 224) Q. Alright. That's when you walked in?

A. Right.

Q. Okay. How about Agent Shell?

A. I don't recall when he walked in.

Q. Alright. What was the first thing said to Mr. Spring that you recall? In your presence?

A. I asked him his name.

Q. Did he respond?

A. Yes, said his name was John Spring.

Q. What next?

A. We talked about the stolen firearms from Iowa.

Q. You did that before you advised him of his rights?

A. No.

Q. Okay, after he said—

(f. 225) A. He was not questioned prior to being advised of his rights.

Q. Did you advise him of his rights before or after he told you his name?

A. He was advised before being asked his name. Before I did.

Q. Alright, and then he consented to talk to you and he (f. 226) told you his name and then you got him to talking about firearms. Is that about the order?

A. That's correct.

Q. And then, after you talked about stolen firearms, did later in the conversation you ask John Spring about a possible murder in Colorado? Is that correct?

A. I asked him if he had any criminal record.

Q. Alright.

A. And then he went from there.

Q. Alright. And then he replied about his criminal record as a juvenile, is that correct?

A. Right.

(f. 227) Q. And, he told you that um he had a record for killing his aunt when he was 10 years old. Is that correct?

A. Yes sir.

Q. And then you asked him if he'd ever shot anyone else, and that's when he mumbled something?

A. Right.

Q. And, it's your recollection that he mumbled "I shot another guy once"?

A. That's what he said.

Q. Were you aware that the same time his aunt was killed that another aunt was shot?

A. Not at that time, no.

Q. Isn't it possible that he could have mumbled that it (f. 228) was another person, not "guy"? Were you listening that closely?

A. Yes, sir I was.

Q. This question followed directly him stating that he had killed his aunt when he was 10 years old, is that correct?

A. Right.

Q. And you asked him if he had ever shot anyone else, is that correct?

A. Correct.

Q. And it is your memory that then he replied "I shot another guy once".

(f. 229) A. Right.

Q. And, he was mumbling with his head down at that point?

A. Plenty loud to hear what he said. He wasn't speaking—

Q. But he was mumbling and his head was down, is that correct?

A. Pardon?

Q. He was mumbling and his head was down?

A. Right. He wasn't speaking as loud as he had previously. I could understand what he said, though.

Q. Okay, and then you inquired where he shot him, but he decline to make any further comments in respect to that shooting. Is that correct?

(f. 230) A. Right. Correct.

Q. Okay, and then its when you asked him about whether or not he was in Colorado?

A. Right.

Q. And then you specifically asked him about the shooting of a man named Walker West of Denver and that's when he declined to talk about that. Is that correct?

A. He said no.

Q. He denied it?

A. Right.

Q. Now, Agent Patterson, John Spring readily admitted being in Colorado in 1979, didn't he?

A. On July the 13th.

(f. 231) Q. On July the 13th, he readily admitted that?

A. Right.

Q. Did he tell you when he had been in Colorado?

A. We tried to pin point the date, he couldn't recollect exactly what day it was. He said there was snow on the ground. And he knew it was 1979.

Q. Okay. And you continued to talk about firearms with him and you asked him about that .22 pistol that he had on (f. 232) him when he was arrested.

A. Right.

Q. Okay. And he stated that that had belonged to Walker?

A. Right.

Q. And then you asked him if he had taken it off Walker's body. Is that correct?

A. Right.

Q. And he stated that he would rather not talk about that. Is that true?

A. That's correct.

Q. And this is something that you wrote up in your own notes. Is that correct?

(f. 233) A. That's correct.

Q. And you had also, just to back up a minute, had written in your own notes that when John Spring at first refused to sign the waiver he stated he didn't want to sign anything without his lawyer. Is that correct?

A. Without talking to his lawyer.

Q. Right. And you remembered that well enough to actually put without his lawyer in your notes, didn't you?

A. Right.

Q. Then after John Spring stated that he'd rather not talk about where the .22 pistol came from, in the respect

to when he got it, you engaged in some more general conversation, did you (f. 234) not?

A. That's correct.

Q. And then after that general conversation, you asked John Spring if he had shot Walker, is that true?

A. Correct.

Q. Okay. And Spring again stated that he'd rather not talk about that. Is that correct?

A. Right.

Q. Then you asked him if Wagner had shot Walker. Is that true?

A. Yes.

(f. 235) Q. Okay. And again Spring stated that he'd rather not talk about that.

A. Right. Correct.

Q. What was this general conversation about that occurred in the interim there?

A. He was talking about Iowa. Staying up in Iowa in the Cliff—Cliffland area. In caves up there.

Q. Camping out in those caves?

A. Camping out in caves.

Q. So it was something totally unrelated to the Walker homicide?

A. Correct.

Q. Is that correct?

(f. 236) A. Correct.

Q. Now Agent Patterson when John Spring stated that he'd rather not talk about whether or not he had taken the gun off Walker's body, at that point, did you back off and start a conversation about something a little different?

A. We talked to him earlier, we told him that if you want to ask the questions, fine, you don't have to. He said he understood that. We'd go on to another topic.

Q. Okay, but would you answer my question? At that point that he said he didn't want to talk about whether or not he had taken the gun off Walker's body, then what—what did you say at (f. 237) that point?

A. I don't recall the exact words—we still carried on a conversation.

Q. But the conversation somehow got off onto the uh the cliffs and the caves in Iowa? Is that correct?

A. We talked about that—we talked about several things.

Q. Then you got back to another pointed question about—you asked him if he had shot Walker, right?

A. Correct.

Mr. Bratfisch: No further questions, thank you sir.

(f. 271) IN THE DISTRICT COURT OF THE
FOURTEENTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF MOFFAT
AND STATE OF COLORADO
Criminal Action Number 79CR40

PEOPLE OF THE STATE OF COLORADO,
Plaintiff,
vs.

JOHN LEROY SPRING,
Defendant.

ORDER

(Filed April 4, 1980)

THIS MATTER came regularly before the Court upon the Defendant's Motion to Suppress evidence and statements made by the Defendant to law enforcement officers and agents, and his motion to Dismiss Count V of the Information. The matter was heard by the Court on March 17, 1980, commencing at 10:00 a.m. (f. 272) The Defendant appeared in person and was represented by Paul R. Bratfisc and Michael Gallagher, Attorneys at Law. The People were represented by Carroll E. Multz and Richard D. Saba. The Court took the testimony and received documentary evidence presented at the March 17, 1980, hearing and has considered the briefs submitted by respective Counsel and their arguments presented at the hearing, and being now fully advised FINDS, CONCLUDES and ORDERS as follows:

1. John Leroy Spring was arrested on March 30, 1979, (f. 273) in Kansas City, Missouri, by agents of the Bureau

of Alcohol, Tobacco, and Firearms for interstate transportation of stolen firearms, dealing in firearms without a license, and other related offenses. This arrest was made after the ATF agents, acting upon information provided by an informant named George Dennison, had set up a buy and sell transaction for firearms with Spring, and after the transaction had been substantially concluded in a K Mart parking lot in Kansas City, Missouri.

(f. 274) 2. Prior to Spring's arrest on March 30, 1979, Dennison had also given information to the ATF agents concerning Spring's statement to Dennison that he (Spring) and another person had killed one Don Walker in Colorado in February, 1979.

3. At the time of Spring's arrest on March 30, 1979, the evidence shows that the ATF agents were acting without an arrest warrant; had arranged the sale through Dennison, and had actively participated in negotiations for the sale and delivery of firearms from Spring to undercover agents in the K Mart parking lot. The officers actually observed the firearms in the trunk of the vehicle in which Spring arrived at the parking lot, and were in the process of transferring the firearms from that vehicle to the ATF undercover vehicle when (f. 275) the arrest was made. Thus there was probable cause for this arrest based both upon the information given by Dennison, and independently upon the direct personal observations of a crime in progress by the ATF agents.

4. At the time of the arrest and incident thereto, the ATF agents conducted a pat down search, and removed a .22 cal. pistol (Exhibit F) from Spring's jacket pocket.

5. Spring was advised by ATF agent Malooly at the scene of the arrest pursuant to the standard Miranda warn-

ing. Spring was then transported to the ATF Bureau Office in Kansas (f. 276) City, and was there re-advised of his rights by Agent Sadowski. Spring indicated to Agents Sadowski and Patterson that he understood his rights, and signed a written form waiving and acknowledging his rights in connection with the interrogation by Patterson and Sadowski, which ensued immediately.

6. The thrust of the interrogation conducted by the (f. 277) ATF agents on March 30, 1979, was directed toward the firearm transactions with which they were directly concerned. The agents were aware of Dennison's information concerning Spring's admission of involvement in a Colorado homicide, and did ask a few questions relating to that incident. Patterson asked Spring about a prior incident in which Spring shot an aunt as a juvenile. He then asked Spring if he had ever shot anyone else. Spring answered: "I shot another guy once." Patterson then asked Spring if he had been in Colorado and Spring replied, "No." Patterson asked if it were true that Spring had killed a Don Walker west of Denver and thrown the body in a snowbank. Spring said, "No."

(f. 278) 7. The Court finds that this questioning was conducted while the Defendant was in lawful custody, pursuant to a valid arrest; that Spring had been properly advised of his rights and was aware of his right to remain silent, to have Counsel present during interrogation, to stop the interrogation at any time; and that his responses to the interrogation were made freely, voluntarily and intelligently; that there was no element of duress or coercion used to induce Spring's statements on March 30, 1979.

(f. 279) 8. Though it is true that Patterson and Sadowski did not specifically advise Spring that a part of

their interrogation would include questions about a Colorado homicide, the questions themselves suggested the topic of inquiry. The questions dealt with "shooting anyone" and specifically killing a man named Walker and throwing his body in a snowbank in Colorado. The questions were not designed to gather information relating to a subject that was not readily evident or apparent to Spring. Spring had been advised of his right to remain silent, his right to stop answering questions, and to have an Attorney present during interrogation. He did not elect to exercise his right to remain silent or to refuse to answer questions relating to the homicide, nor did he request Counsel during interrogation.

(f. 280) '9. The Court concludes that the statements made to Patterson and Sadowski on March 30, 1979, should not be suppressed, and may be admitted in evidence.

10. The .22 cal. pistol was lawfully seized in a lawful search pursuant to a valid and lawful arrest and should not be suppressed. Exhibit F is deemed admissible in evidence.

11. On May 26, 1979, Detective Curtis of the Moffat County Sheriff's Department and Agent Leo Konkel of the Colorado Bureau of Investigation interviewed Spring at the Jackson County Jail in Kansas City, Missouri. These Officers (f. 281) again advised Spring of his "Miranda" rights and Spring once again executed a written acknowledgement and waiver form. The Officers identified themselves, and told Spring they wanted to question him about the Walker homicide. Spring told the Officers he wanted to get it off his chest. The interview lasted approximately 1½ hours, and during that time Spring talked freely to the Officers, did not elect to refuse to answer any questions,

and never requested Counsel during the interview, although he was aware of his right to remain silent, to stop the interrogation, and to have Counsel present. There is no (f. 282) evidence that the interrogation, conducted in the "day room" of the jail was conducted in a coercive manner or that any threats or promises were made to Spring to induce his participation in the interview. After the interview was completed, Spring read and edited a written statement summarizing the interview prepared by Konkel, and signed the written statement. The Court finds that the statement given by Spring on May 26, 1979, was made freely, voluntarily, and intelligently, after his being properly and fully advised of his rights, and that the statement should not be suppressed, but should be admitted in evidence.

(f. 283) 12. Spring was next interviewed by Agent Patterson at the Jackson County Jail on July 13, 1979, after Spring had been found guilty of the firearms violations. Patterson's primary purpose of conducting this interview was to obtain additional information concerning Spring's knowledge of an additional cache of firearms and explosives. Agents Patterson and Wactor conducted this interview. They met Spring, Patterson identified the agents, and Spring laughingly said, "I know who you guys are." Spring was re-advised pursuant to the "Miranda" requirements using the standard ATF advisement (f. 284) and waiver form. Upon being advised on this occasion, Spring said, "I understand my rights but I won't sign anything without a Lawyer."

13. Patterson and Wactor got up and started to leave. As the agents were exiting the day room, Spring said, "I won't sign any forms without a Lawyer, but I'll talk to you." The agents then sat back down and continued their

discussion with Spring. During this interrogation, Spring admitted being in Colorado in 1979. He was asked about firearms, and he was (f. 285) specifically asked where he got the .22 cal. pistol the agents had seized (Exhibit F). Spring said, "That's Walker's gun."

Asked if he took the gun off Walker's body, Spring said, "I'd rather not talk about that." Asked if he shot Walker, Spring said, "I'd rather not talk about that." Asked if Wagner had shot Walker, Spring said, "I'd rather not talk about that."

Spring did say that he, Wagner and Walker had been riding around together, and that he had gotten the gun from Walker before Walker went into the ravine.

(f. 286) Patterson asked, "Is it safe to assume that you Wagner and Walker went out together and that only you and Wagner came back alive?" Spring replied, "Yeah, you could say that."

14. The Defendant urges that the statements made during the July 13th interview should be suppressed because of the continued interrogation after a request for Counsel. From the evidence presented, however, the request for Counsel was not for advice during interrogation, but for the purpose of advising him if he were to be asked to sign any "forms." (f. 287) Spring indicated that he did understand his right to remain silent, but that he did not want to exercise that right. He also was aware of his right to Counsel, but elected not to request Counsel unless "forms" were to be signed. He was advised that any statement he made might be used against him, and indicated that he understood that warning as well as the other "Miranda" warnings.

Spring did understand that he had the right not to answer questions, and exercised that right with respect to several specific questions.

(f. 288) Spring further urges that again he was not advised prior to the interview that he would be questioned about the Walker homicide. However, once, again, the questions were not disguised ruse questions designed to trick an unwary person into admitting involvement in a crime of which he was totally unaware. By July 13, 1979, Spring had already told Curtis and Konkell about his involvement with Wagner in the shooting of Walker in the May 26th interview. In addition, (f. 289) by that time a warrant had been issued by this Court upon an Information charging Spring with Walker's murder. The arrest warrant issued on May 29th, 1979, and a hold had been placed on Spring in connection with the Moffat County murder charge before the July 13th interview.

15. The Court concludes that Spring made the July 13 statements to Patterson and Wactor after being fully and adequately advised of his "Miranda" rights, and that he knowingly and intelligently waived his right to remain silent or to have an Attorney present during questioning. The statements were made without inducement by coercion or threat. (f. 290) No promises were made by the agents to induce his statements. The statements of July 13, 1979, should not be suppressed, and should be admitted in evidence.

16. The Defendant contends as a matter of law that Count V of the Amended Information must be dismissed because the conviction therein alleged occurred after the date of commission of the principal offense of Murder as

contained in Count I of the Information. The alleged date of the murder is "on or about the 1st day of February, 1979" The date of the conviction relied upon in Count V of the Information to support penalty enhancement under C.R.S. 1973, 16-13-101 is July 5 1979.

(f. 291) 17. C.R.S. 16-13-101 provides "Every person convicted . . . who, *within ten years of the date of the commission of said offense, has been twice previously convicted . . .*" (emphasis added) shall be adjudged an habitual criminal. The Statute on its face would seem to require that the previous convictions relied upon must antedate the date of commission of the primary offense rather than the date of trial or conviction of the primary offense. This construction is consistent with (f. 292) the construction of similar Statutes in other States. See Annot. 24 ALR2d 1247, 1249. Such construction is also consistent with the general rule that criminal Statutes in derogation of the common law must be strictly construed, and doubtful questions of construction must be resolved in favor of the accused. The Court therefore concludes that Count V must be dismissed for failure to properly charge a criminal offense. Further, the dismissal of Count V will render Count IV of the Complaint Information invalid to state an offense and Count IV will, by dismissal of Count V, be mere surplusage. Count IV should also be dismissed.

(f. 293) For the foregoing reasons and based upon the Findings and Conclusions stated above,

IT IS ORDERED that the Defendant's Motion to Suppress evidence and statements is DENIED.

IT IS FURTHER ORDERED that the Defendant's Motion to dismiss Count V of the Information is GRANTED.

IT IS FURTHER ORDERED that Count IV of the Information is DISMISSED and STRICKEN as surplusage.

DATED this 4th day of April, 1980, at Craig, Colorado.

(f. 294) BY THE COURT:

/s/ Claus J. Hume,
District Judge

Copies to: Carroll E. Multz
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TRANSCRIPT OF ORAL RULING

• • •

(f. 2630) The Court: Thank you, Mr. Multz. The Court has considered the Defendant's objection to the testimony concerning the matters heard during the in limine portion of the hearing. The Court is inclined to believe that the question in the Patterson interview as addressed in Paragraph 6 of (f. 2631) the Motion in Limine, the specific question, have you ever shot anybody else and the response, I shot another guy once, is irrelevant to this case. The whole context of the conversation indicates that it does not relate to the homicide in question before the Court because subsequently when specifically asked about the particular killing involved, the Defendant did deny that particular killing. The Court is inclined to believe that the conversation relating to whether or not the Defendant, Spring, shot a man named Walker, (f. 2632) west of Denver and threw his body in a gully or in a snowbank and the response to that question is admissible and should be admissible in this case but the other statement about shot another guy once and the question which elicited that statement is deemed by the Court to be irrelevant.

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